

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8993 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PARKASH CHAMPAKLAL SHAH BROTHER OF THE DETNEU

Versus

JOINT SECRETARY

Appearance:

MR RS GAJJAR for Petitioner
MR B T Rao for Respondent No. 1
NOTICE UNSERVED for Respondent No. 2
NOTICE SERVED for Respondent No. 3

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 10/09/98

ORAL JUDGEMENT

By way of this Special Civil Application, the petitioner seeks direction to quash the order of detention dated 18.8.1997 passed by the Joint Secretary to the Government of India in exercise of powers under section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (as amended) with a view to prevent him in future from acting in any

manner prejudicial to the Conservation of Foreign Exchange. The order of detention is accompanied with the grounds of detention which discloses that the office of the Enforcement Directorate revealed that foreign exchange worth Rs. 128.84 crores were remitted out of India from early 1992 to March 1996 against 500 (approx.) transactions relating to import of rough diamonds. These remittance were made from 5 current accounts of the firms mentioned therein with the Bank of Baroda, Bhagatalao Branch, Surat. Acting on the information of the officers of the Enforcement Directorate, Mumbai, a search was carried out at various places including that of the petitioner situated at 2/4338, 1st floor, Ichcha Mehta ni Sheri, Sagrampura, Surat under section 37 of the Foreign Exchange Regulation Act, 1973 (for short 'FERA') on 7.10.1996. The search resulted in recovery and seizure of documents and rubber stamps of (1) M/s Shantinath Enterprises (2) M/s. Mahavir Diamond (3) M/s. Manan Exports and (4) M/s. Bright Diamond Co. and cheque books of accounts of these firms with Bank of Baroda, Bhagatalao Branch Surat containing counterfoils and blank signed cheques (on front and back) having no description of beneficiary, date and amount. On consideration of the statements of various witnesses and a large number of documents, the detaining authority arrived at the conclusion that the petitioner has been engaged in unauthorised transaction in violation of FERA 1973. The authority also satisfied that the unauthorised transactions indulged in by the petitioner has affected the foreign exchange resource of the country adversely.

2. Challenging the order of detention, Mr R S Gajjar, learned Advocate submits that the representation against the order of detention dated 18.8.1997 was made to the Government of India on 6.11.1997, but the same was decided as late as on 9.12.1997. Thus, the contention is that this undue delay of one month and three days is in violation of Rule 22(5) of the Constitution of India. Mr Gajjar, learned Advocate has also filed an affidavit stating that he had appeared before the COFEPOSA Advisory Board of Delhi at Delhi High Court on 6.11.1997 and represented the case of the detenu. He personally handed over the representation on 6.11.1997 to the Secretary of the COFEPOSA Advisory Board. The said representation was addressed to the detaining authority Mr Somnath Pal. It is further stated that copies of the same were given to the Secretary, Government of India and to the Chairman of the Advisory Board. An affidavit has been filed by Shri Somnath Pal, Joint Secretary, Government of India stating that the representation dated 6.11.1997 addressed to the Chairman, Central Advisory Board was received in the

Ministry on 21.11.1997 along with the report of the Advisory Board. Immediate action was taken to call for comments of the sponsoring authority on 24.11.1997. It is also stated that 22nd and 23rd were closed holidays being Saturday and Sunday. The comments of the Sponsoring authority under letter dated 27.11.1997 from Mumbai was received on 2.12.1997. The report along with the comments of the Sponsoring authority were submitted to the detaining authority on 3.12.1997 who rejected the same on 3.12.1997. The detenu was immediately informed of the rejection of the representation. So far as the delay of 14 days i.e. for the period 6.11.1997 to 21.11.1997 is concerned, it is stated by the detaining authority that the representation was received along with the report of the Advisory Board only on 21.11.1997. As the representation was given to the Secretary of the COFEPOSA Advisory Board, the same was sent along with the Report of the Board. In my view, the delay of 14 days has been adequately explained. The comments were sought from the sponsoring authority on 24.11.1997 as 22nd and 23rd were holidays. While the detaining authority is stationed at Delhi and the sponsoring authority is at Mumbai, the comments were received i.e. within 8 days which cannot be said to be unusual delay. The authority immediately taken decision on 3.12.1997. Therefore, the delay in deciding the first representation has been properly explained. So far as the second representation is concerned, though it was addressed to the Secretary to the Government of India, the same was also handed over to the Secretary, COFEPOSA. It is not the case of the petitioner that the second representation was delivered to the Secretary, Government of India directly. It appears that the Secretary, COFEPOSA transmitted the representation along with the report of Advisory Board which reached the office of the detaining authority on 21.11.1997. After receipt of the comments from the sponsoring authority the second representation was also decided on 5.12.1997. Thus in my view, at the first instance, there is no delay and even if there is delay, the same has been properly explained.

3. In view of the aforesaid, I find no merit in this Special Civil Application and the same is accordingly rejected. Rule discharged.

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msp.